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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/729,676
Filing Date: December 05, 2003
Appellant(s): LUCIANI ET AL.

Nick P. Patel
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 21, 2009 appealing from the Office action

mailed January 26, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

"Integrated Lights-Out Technology: Enhancing the Manageability of ProLiant Servers", (April 2002), p. 1-12.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis

for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 and 15-20 are rejected under 35 U.S.C. 102(b) as being anticipated by "Integrated

Lights-Out Technology: Enhancing the Manageability of ProLiant Servers".

As concerns claim 1, a system comprising: a CPU (inherent to have a CPU); a memory

(page 1, paragraph 1) coupled to the CPU, the memory storing programs executable by the CPU

(Operating System of server-abstract); and a system management processor (page 1, paragraph

1-RISC processor; page 3-ASIC) coupled to the CPU, wherein the system management

processor is operable selectively (page 4-last paragraph-features of advanced pack are available

immediately for a software based session) to establish hardware-based remote console sessions

(page 3, fourth paragraph; page 4-Hardware-base text remote console; session while OS is not

functional-abstract) and software-based remote console sessions (page 4-Advanced features

include Graphical Remote console; page 6-Integrated Lights-Out Advanced features are

activated, customers using a graphical OS such as Windows 2000 can also view the host server

console at any time; session while OS is functional-abstract). Note the term operable has been

interpreted as "able to operate" and the functions are not positively and actually performed only that the processor is "able to operate" in such a way.

As concerns claims 2 and 13, wherein the programs executable by the CPU support software-based remote console sessions (page 4-Advanced features include Graphical Remote console; page 6-Integrated Lights-Out Advanced features are activated, customers using a graphical OS such as Windows 2000 can also view the host server console at any time).

As concerns claim 3, the system of claim 2, wherein the programs executable by the CPU enable data transfer between the system and the system management processor (the term "enable" is not a positive limitation since it only enables data transfer and does not positively recite that the act of data transfer ever takes place; page 3, paragraph 4 – subsystem can monitor host server thus data transfer takes place).

As concerns claim 4, the system of claim 1, wherein the system management processor comprises an application-specific integrated circuit (page 3).

As concerns claim 5, the system of claim 4, wherein the system management processor supports hardware-based remote console sessions (page 3, fourth paragraph; page 4-Hardware-base text remote console; session state while OS is not functional-abstract) and software-based remote console sessions (page 4-Advanced features include Graphical Remote console; page 6-Integrated Lights-Out Advanced features are activated, customers using a graphical OS such as Windows 2000 can also view the host server console at any time; session state while OS is functional).

As concerns claim 6, the system of claim 1, wherein the system management processor is powered independently from the system (page 5, paragraph 1).

As concerns claim 7, the system of claim 1, wherein when operating a hardware remote console the system management processor tracks changes in a video memory, analyzes the changes, compresses data describing the changes, and sends the compressed data to remote locations (page 5, last paragraph-Console redirection logic-video activity, captures video information, encodes and compresses before transmitting; p. 7, paragraph 6-vidoe buffer).

As concerns claim 15, a computer system, comprising: a means for executing programs (inherent to have a CPU); a means for storing programs (page 1, paragraph 1) for execution coupled to the means for executing; and a means for providing remote console (page 6, paragraph 4) to the computer system coupled to the means for executing; wherein the means for providing selectively establishes hardware-based remote console sessions (page 3, fourth paragraph; page 4, line 9-hardware based; session state OS not functional-abstract) and software-based remote console sessions ((page 4-Advanced features include Graphical Remote console; page 6-Integrated Lights-Out Advanced features are activated, customers using a graphical OS such as Windows 2000 can also view the host server console at any time; session state OS functional).

As concerns claim 16, the computer system of claim 15, wherein the means for storing further comprises programs for execution that support software-based remote console sessions ((page 4-Advanced features include Graphical Remote console; page 6-Integrated Lights-Out Advanced features are activated, customers using a graphical OS such as Windows 2000 can also view the host server console at any time; session while OS functional -abstract).

As concerns claim 17, the computer system of claim 16, wherein the programs for execution facilitate communications between the computer system and the means for providing (page 3, paragraph 4 – subsystem can monitor host server thus data transfer takes place).

As concerns claim 18, the computer system of claim 15, wherein the means for providing comprises: an application-specific integrated circuit (page 3), the application-specific integrated circuit comprising a microcontroller; and a memory (page 1, paragraph 1) coupled to the application-specific integrated circuit.

As concerns claim 19, the computer system of claim 18, wherein the memory is used for communication between the means for providing and the computer system (page 1, paragraph 1-memory directly and indirectly aides in the performance of the system including communication).

As concerns claim 20, the computer system of claim 20, wherein when operating a hardware remote console the means for providing tracks changes in a video memory, analyzes the changes, compresses data describing the changes, and sends the compressed data to remote locations (page 5, last paragraph-Console redirection logic-video activity, captures video information, encodes and compresses before transmitting; p. 7, paragraph 6-vidoe buffer).

(10) Response to Argument

Claims 1-6 and 15-19

The appellant argues Publication fails to teach or suggest "wherein a system management processor is operable selectively to establish hardware-based remote console sessions and software-based remote console sessions" (Appeal Brief p. 10).

The examiner disagrees since the claims have been given the broadest reasonable interpretation and the prior art Publication (Integrated Lights-Out Technology: Enhancing the Manageability of ProLiant Servers, hereinafter "Publication") anticipates the claim limitations. It appears the appellant is reading limitations from the specification into the claim that would narrow the scope of the claim. The claims have been read in light of the specification however limitations from the specification have not been read into the claim.

The Examiner has given the claims the broadest reasonable interpretation and an explanation of the Examiner's interpretation of the metes and bounds of Claim 1 will be discussed herein. Claim 1, for the purposes of 35 USC 101, appears to fall into the statutory category of a machine. Therefore the elements recited in the body of the claim comprise the machine. These elements comprise a CPU, a memory and a system management processor. These elements have been mapped to the "Publication" (see rejection above), and have not been disputed by the appellant.

The appellant is arguing the function being performed by the system management processor. The claim recites the term "operable", thus the examiner has interpreted the function in view of this limitation, wherein the "system management processor" is "able to operate" to perform the function. The recitation is not a positive limitation only requiring the "ability to operate".

The appellant's claim 1 does not recite any particular structure, other than the "system management processor" for performing the function of "operable selectively to establish hardware-based remote console sessions and software-based remote console sessions." Therefore the "Publication" anticipates the claimed functional limitation since it discloses the structure of a

"system management processor" (Publication: page 1, paragraph 1-RISC processor; page 3-

ASIC) that is operable to perform the function. The "system management processor" of

Publication is responsible and involved in sessions between a remote client and a server when

the OS is not functional, hardware-based session, and at times when the OS is functional,

software-based sessions.

A further analysis of the scope of the claimed functional language of "hardware-based

remote console sessions and software-based remote console sessions" has been interpreted in

light of the appellant's specification. The appellant discloses in their specification a hardware

session may not need Operating System (OS) assistance or when the Operating System (OS) is

not running (e.g. while the server is powered down, during the boot-up process, or during OS

failure) (Appellants' specification: p. 5-7, paragraphs 0019, 0022). The appellant discloses in

their specification a software session involves the programs executable by the CPU of the server.

Therefore if the OS is running, the OS, is a program executed by the CPU of the server, then a

software-based session would be taking place (see Appellants' specification p. 5, paragraph

0020).

The "Publication" discloses both of these situations and is "able to operate" both

conditions. The Publication discloses managing the server through any state: initial power-on

testing, before the OS is loaded, while the OS is functional and even if there is an OS failure (see

abstract of Publication). Therefore the "Publication" discloses both software-based sessions,

communication when OS is loaded, and hardware-based sessions, OS is not functional, therefore

communication for a session is taking place without aid from a program, such as the Operating

System, of the server CPU. The communication during the hardware-based session is being

conducted with the aid of a separate processor (see Publication, p. 5, paragraph 1), that meets the

claim limitations of the "system management processor".

The appellant argues Publication teaches only hardware remote console sessions and fails to

teach software remote console sessions (Appeal Brief p. 10-11).

The Examiner disagrees since, as discussed above, the claims have been given the broadest

reasonable interpretation and interpreted in light of the specification. The appellant has set forth

in the specification, not the claims, particular conditions that define a software-based session and

a hardware-based session. The Publication satisfies the claimed limitations since it performs both

a software-based session (Operating system is functioning) and a hardware-based session

(Operating system is not functioning).

The appellant argues Publication is able to select only one of the sessions (i.e. a hardware

session) does not have this dual capability that appellants are claiming (Appeal Brief p. 11).

The Examiner disagrees since it appears the appellant is reading limitations into the

claim. The claim recites "operable selectively to establish". Therefore since the Publication

establishes both software and hardware based sessions it satisfies the claim limitation. The claim

does not recite any particular structural element, other than the system management processor, to

perform the function. The claim does not recite switching from one session to another while one

session is taking place. Only that the system management processor is "operable to" selectively

establish. Thus at one point in time the "system management processor" of the Publication is able

to operate a hardware-based session (OS not functional-see at least Publication abstract) and at

another point in time operate a software-based session (OS is functional-see at least Publication

abstract).

The appellant argues pages 4 and 6 of Publication do not satisfy the claimed "software-based

remote console session". The appellant further argues page 4 does not disclose "selectively" at

all or selectively between hardware and software based remote console sessions (Appeal Brief,

P. 11).

      The Examiner disagrees since it appears the appellant is reading limitations into the

claim. The claim recites "operable selectively to establish". Therefore since the Publication

establishes both software and hardware based sessions it satisfies the claim limitation. The claim

does not recite any particular structural element, other than the system management processor, to

perform the function. It is unclear what particular special meaning the appellant is placing upon

the term "selectively". The claim does not recite switching from one session to another while one

session is taking place. Only that the system management processor is "operable to" selectively

establish. Thus at one point in time the "system management processor" of the Publication is able

to operate a hardware-based session (OS not functional-see at least Publication abstract) and at

another point in time operate a software-based session (OS is functional-see at least Publication

abstract).

      The appellant further argues, the graphical remote console ability (on pages 4 and 6 of

Publication) do not actually constitute software remote console sessions. The appellant further

states the Publication itself plainly admits that graphical remote consoles are hardware-based

(Appeal Brief p.12).

All sessions, even a software-based session, will be based in hardware, since the software

needs to be executed on some form of hardware to realize its functionality. Thus the graphical

console is being realized by hardware it can satisfy as a software-based session. Furthermore a

software-based session as interpreted in light of the specification can be a session while the

Operating System is functioning, which is disclosed by "Publication".

Claims 7 and 20

The appellant argues claim 7 requires "wherein when operating a hardware remote console the

system management processor tracks <u>*changes*</u> *in a video memory, analyzes the changes,*

compresses data describing the changes, and sends the compressed data to remote locations"

(emphasis added). The appellant further argues Publication, p. 5, does teach "monitoring the

PCI bus for video activity," but it does not teach "tracking changes in a video memory." (Appeal

Brief p.12-13).

The Examiner disagrees since Publication, (p. 7, paragraph 6) discloses "the custom logic

monitors the PCI bus for changes to the video frame buffer." Therefore the custom logic (a

"system management processor") tracks changes to video memory (video buffer) via the PCI

bus. Even if the custom logic ("system management processor") does the tracking indirectly via

the PCI bus, it still satisfies the claim limitation, since the claim does not preclude the tracking

being done indirectly. Furthermore, the appellant's specification at paragraph 0013 discloses that

the claim terms may be interpreted as either indirect or direct.

The Publication (p. 5, last paragraph) discloses the further claim limitations as monitoring and capturing the video information, encoding and compressing, and transmitting the data.

The appellant further states "Monitoring a bus is not the same as monitoring memory and further, monitoring for video activity is not the same as monitoring for actual changes."(Appeal Brief p. 13).

The claim does not recite that the tracking is done directly. The custom logic of Publication monitors the bus for monitoring the video buffer. A video buffer of Publication satisfies the claim limitation of a "video memory". Furthermore, the appellant's specification at paragraph 0013 discloses that the claim terms may be interpreted as either indirect or direct.

It is unclear how monitoring for video activity is not the same as monitoring for "actual changes." It is unclear what applicant defines as "actual changes" which are not set forth in the claims. Limitations from the specification are not read into the claims. Monitoring for activity would inherently monitor for change, since "activity" is a change in state from previous point in time.

Claims 8 and 11-14

The appellant's arguments concerning claims 8 and 11-14 are found persuasive and the rejection of these claims has been withdrawn. However, these claims are still rejected under the Double Patenting rejection as recited in the Office Action of January 26, 2009.

The following is a statement of reasons for the indication of allowable subject matter: Claim 8 explicitly discloses wherein the remote computer further comprises a software-based

remote console applet program and a hardware-based remote console applet program, the

software-based remote console applet program supporting software-based remote console

sessions and the hardware-based remote console applet program supporting hardware-based

remote console sessions; and wherein the hardware-based remote console applet program

controls the software-based remote console applet program.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related

Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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